

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-06-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.12121 OF 2001

National Union of Seafarers
of India (MDS) INTUC,
Rep. by its General Secretary
K. Annamalai
161/2, Angappa Naicken Street,
Chennai 1. ... Petitioner

Vs.

1. The Union of India,
rep. by its Secretary,
Ministry of Shipping &
Transport Department,
New Delhi.
2. The Director General of Shipping,
Jahaz Bhavan
Walchand-Hirachand Marg
Bombay 88.
3. The Principal Officer,
Mercantile Marine Department,
Anchor Building, Rajaji Salai,
Madras 600 001. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari (Prayer amended as per order of this Court dated 11.10.2001 in WMP 19277/2001) in or any other appropriate writ or order direction the nature of a writ, thereby calling for the records of the 3rd respondent in his communication dt. 28.5.2001 and quash the same and directing the respondents to issue identity cards to members of the petitioner-union for being appointed as Canteen Crew in Vessels sailing between Madras-Andaman-Madras-Singapore-Madras.

For Petitioner : Mr.M. Jayaraman
For Respondents : Mr.K. Mohanram, SCGSC.,
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J U D G M E N T

The present writ petition has been filed by National Union of Seafarers of India (MDS), represented by its General Secretary for issuing a writ of certiorari for quashing the communication dated 28.5.2001 and further directing the respondents, namely the Union of India, represented by its Secretary, Ministry of Shipping & Transport Department, the Director General of Shipping and the Principal Officer, Mercantile Marine Department, Chennai, to issue identity cards to the members of the petitioner Union for being appointed as Canteen Crew in the Vessels sailing between Madras-Andaman-Madras-Singapore-Madras.

2. The basic allegations as contained in the writ petition are as follows :-

The Government of India have issued a Notification under the Merchant Shipping Act, 1958 (hereinafter referred to as "the Act") establishing a shipping office in Madras having Respondent No.3 as Principal Officer in-charge of the said shipping office. M/s. National Union of Seafarer's of India, Bombay have filed C.S.No.173 of 1988 in the Madras High Court seeking for injunction restraining the defendants therein from recruiting persons at Madras for employment as seamen and from discharging any of the functions of a Seamen's Employment Office at Madras. As per the petitioner's case, apart from seamen, there are few other employees such as members of the canteen crew employed in passenger vessels. Such canteen crew consists of cooks, servers and assistants. Such persons are recruited by owners of the ships on the basis of medical fitness and for the purpose of identity, identity cards are issued to such canteen crew by the Principal Officer in the Port of Chennai. Previously, the third respondent issued identity cards to the members of the petitioner Union for passenger vessels operating between Chennai - Andaman - Chennai and Chennai - Singapore - Chennai. However, the third respondent discontinued to issue identity cards to the petitioner's union and such cards are being issued only to the members sponsored by the Bombay based labour union. Such practice being discriminatory, the petitioner filed W.P.No.386 of 1992. In the counter affidavit filed in the said case, it was the stand of the present third respondent that the canteen crew cannot be called as seamen and cannot be regulated under the Merchant Shipping Act, 1958. It is further indicated that identity cards were issued to the canteen crew on Board of a passenger vessel and such cards are being valid for a period of six months or for a voyage subject to revalidation. The said writ petition was subsequently disposed of by a learned single Judge of this Court on 12.1.1999 with the observation permitting

the petitioner Union to make a representation explaining their grievance. Subsequently, the Union by letter dated 2.5.2000 submitted a representation to the present third respondent and requested for issuance of identity cards for 167 members. By letter dated 15.5.2000, the Assistant Director, SEO, at Mumbai, sent a reply explaining that certain particulars are called for from the Principal Officer at Chennai and the matter would be finalised as per the Rules. However, identity cards were not issued and the respondents indicated that the petitioner should apply for issuance of Continuous Discharge Certificate (in short CDC) as envisaged under the Merchant Shipping (Continuous Discharge Certificate) Rules, 1993. Accordingly, the Union deposited the required sum and subsequently reiterated that the Union was interested in getting the identity cards for his members and the Merchant Shipping (Continuous Discharge Certificate) Rules were not applicable for the canteen crew. However, since such application had not been disposed of, the petitioner filed Contempt Application No.178/2001. The said contempt application was dismissed on 27.3.2001 on the ground that no application as contemplated in the order dated 12.1.1999 in W.P.No.386 of 1992 had been made. The Court further observed that such a representation should be made by the petitioner Union within a further period of four weeks. Accordingly, a fresh representation was made by the Union on 25.4.2001 and individual applications were also submitted by 112 members of the Union. The third respondent sent a reply dated 28.5.2001 indicating that there is no provision to issue identity cards to the canteen crew/Bazarman under the existing Rules. It was further indicated that Continuous Discharge Certificate cum Seafarers Identity documents (CDC) are issued to Seafarers as per the Merchant Shipping (Continuous Discharge Certificate) Rules, 1993 as amended from time to time. The prayer in the said writ petition was to quash the aforesaid letter and to issue appropriate direction.

3. The main contention raised in the writ petition is to the effect that canteen crew are not governed by the provisions of the Merchant Shipping Act and the Rules framed thereunder and identity cards are issued to canteen crew / Bazarman only for six months or for a particular voyage. Such identity cards were being issued previously and the respondents have arbitrarily with-held the issuance of such identity cards to the members of the Union without any rhyme or reason. It has been further contended that there was no occasion for the respondents to direct the petitioner Union to file application for issuance of Continuous Discharge Certificate, as such crew members cannot be called as Seamen and cannot be regulated under the Merchant Shipping Act, 1958.

4. A counter affidavit has been filed on behalf of the respondents. While denying the allegations in general, it is

contended in the counter affidavit that a person going as canteen crew or in similar capacity is also required to obtain Continuous Discharge Certificate-cum-Seafarers Identity Documents and such Continuous Discharge Certificate -cum-Seafarers identity documents can be issued under Rule 4(9) of the Merchant Shipping (Continuous Discharge Certificate) Rules, 1993 as amended in 1997. It has been further indicated that Calcutta High Court in its judgment dated 9.4.2001 in W.P.No.98 of 2000 had decided that there is no justification for issuing CDC by classifying some person as Home Trade, Foreign going and Hotel staff. It has been further clarified in the said decision that the expression "crew member or seamen" are to be considered in a generic sense and would include the members assisting in the canteens. In the counter it has been further stated that though identity cards were being issued earlier as per the interim order passed by the High Court, no such procedure can be followed and Continuous Discharge Certificate can be issued only in accordance with Rule 4(9) of the Merchant Shipping (Continuous Discharge Certificate) Rules. The allegation that such identity cards are only issued to the members of Bombay based union is denied. It has been further asserted that even in respect of Bazarman or the members of the canteen crew, such CDCs can be issued to those who have completed minimum period of six months on board of any passenger vessel within the period beginning from 1st April, 1993 and ending on six months from the date of notification of amendment to the Merchant Shipping (Continuous Discharge Certificate) Rules, 1997. Continuous Discharge Certificate can be issued only in accordance with the provisions contained in the Merchant Shipping (Continuous Discharge Certificate) Rules, 1997.

5. The main contention of the petitioner that the members of the canteen crew or the Bazarman cannot be equated with the expression "seamen", and therefore, the provisions of the Merchant Shipping (Continuous Discharge Certificate) Rules are not applicable, cannot be accepted. As observed by the Calcutta High Court, the technical distinction between a seafarer and a seaman is not the governing factor in such matter. The Rules have been framed with a view to regulate the persons who would be eligible to go as such. Validity of the Rules have not been challenged. In view of the provisions contained in the Merchant Shipping (Continuous Discharge Certificate) Rules, the contention of the petitioner's Union that the members of the Union have a right bereft of the Rules to receive identity cards cannot be accepted. Since the letter issued by Respondent No.3 is in accordance with the Rules as amended in 1997, the prayer for quashing such letter does not appear to be tenable. Merely because identity cards had been issued on earlier occasion to the members of the canteen crew is not a sufficient ground to issue writ of mandamus or any other writ in the absence of any vested right.

6. In such view of the matter, I do not find any merit in this writ petition, which is accordingly dismissed. There would be no order as to costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
Ministry of Shipping &
Transport Department,
New Delhi.
2. The Director General of Shipping,
Jahaz Bhavan
Walchand-Hirachand Marg
Bombay 88.
3. The Principal Officer,
Mercantile Marine Department,
Anchor Building, Rajaji Salai,
Madras 600 001.

+ 1 cc to Thiru K.Mohanram, SCCG (SR No.23736 dt 14.6.2005)

RR(CO)
SR/14.6.2005

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JUDGMENT IN
W.P.NO.12121 OF 2001